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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Situation of human rights in Afghanistan and technical assistance achievements in the field of human rights*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, the United Nations High Commissioner for Human Rights describes the situation of human rights in Afghanistan from 1 January to 30 November 2017, and provides an overview of the work and technical assistance conducted by the Human Rights Service of the United Nations Assistance Mission in Afghanistan in cooperation with the Office of the High Commissioner.

The report focuses on the five principal areas of work of the Human Rights Service, namely, the protection of civilians in armed conflict; the protection of children in armed conflict; the elimination of violence against women, and increasing women's participation in peacebuilding and security, and gender equality; the prevention of torture and arbitrary detention; and the integration of human rights into peace and reconciliation processes.

The High Commissioner concludes the report with recommendations addressed to the Government of Afghanistan, anti-government elements, all parties to the conflict and the international community.

* The present report was submitted late owing to a technical error in the submission process.

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I. Introduction

1. The present report, prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA), is submitted to the Human Rights Council pursuant to its decision 2/113 and resolution 14/15. It covers the period from January to November 2017.

2. The report focuses on the five priority areas of work of the UNAMA Human Rights Service, namely, the protection of civilians in armed conflict; the protection of children in armed conflict; the elimination of violence against women and the promotion of gender equality; the prevention of torture; support to civil society and the integration of human rights into peace and reconciliation processes.

3. During the period under review, the Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the human rights mandate of UNAMA.

II. Context

4. In 2017, the escalation in conflict, military engagement and urban attacks by anti-government elements[1] continued to cause high levels of civilian casualties, even though a decline was recorded. While various initiatives by the Government of Afghanistan, other States and the United Nations continued to pursue a peaceful resolution of the conflict, progress towards initiating a peace process did not materialize. The Government remained committed to the protection of human rights; Afghanistan was elected to become a State member of the Human Rights Council in January 2018.

5. The new strategy of the United States of America for South Asia, announced in August 2017, resulted in an increase in foreign troops in Afghanistan. Fighting continued in both rural and urban areas, with anti-government elements resorting to indiscriminate and disproportionate attacks that caused civilian casualties and other forms of harm to civilians. The resilience and spread of Islamic State in Iraq and the Levant (ISIL) – Khorasan Province heightened concerns for the protection of civilians and resulted in more targeted attacks, including against the Muslim Shia minority in Kabul and Herat.

6. The political situation remained unstable, with tensions flaring up periodically within the National Unity Government and with Parliament over appointments, the budget, intensive anti-corruption efforts and election preparations. District and legislative elections were announced for July 2018 and presidential elections for 2019.

7. The economic situation remained dire, with little foreign investments and employment opportunities, leading to widespread urban and rural poverty. Large-scale movement of Afghans departing for Europe and returning from Pakistan and the Islamic Republic of Iran was witnessed in 2016. While the number of outgoing Afghans declined in

[1] A range of groups, primarily the Taliban and the Islamic State in Iraq and the Levant (ISIL) – Khorasan Province, involved in armed conflict with, or in armed opposition against, the Government of Afghanistan and/or international military forces. They include those who identify as "Taliban" and individuals and non-State organized armed groups taking a direct part in hostilities, such as the Haqqani Network, the Islamic Movement of Uzbekistan, the Islamic Jihad Union, Lashkar-e-Tayyiba, Ja-sh-e-Muhammad, groups identifying themselves as "Daesh", and other militia and armed groups pursuing political, ideological or economic objectives, including armed criminal groups directly engaged in hostile acts on behalf of a party to the conflict.

2017, Afghanistan still received almost 570,000 returnees in 2017, overwhelming social services in certain areas. The returnees added to nearly 435,000 new internally displaced persons.[2]

III. Protection of civilians

8. In 2017, UNAMA/OHCHR continued to document civilian deaths and injuries, which still exceeded 10,000, despite a 10 per cent decrease as against the same period in 2016, the first year-on-year decrease in civilian casualties recorded since 2012. Conflict-related violence continued to destroy livelihoods, homes and property, and restricted access to health, education and other services. UNAMA/OHCHR consistently documented ground engagements, suicide and complex attacks and improvised explosive devices as leading causes of civilian casualties. Moreover, increased use of aerial operations by pro-government forces, and targeted and deliberate attacks by anti-government elements, continued to cause civilian casualties.

9. From 1 January to 30 November 2017, UNAMA/OHCHR documented 9,687 civilian casualties (3,183 deaths and 6,504 injured). It attributed 65 per cent of these casualties to anti-government elements and 20 per cent to pro-government forces (comprising the Afghan National Defence and Security Forces, pro-government armed groups and international military forces). Some 11 per cent of casualties resulted from ground engagements between anti-government elements and pro-government forces where responsibility could not be attributed to a specific party to the conflict. The remaining 4 per cent resulted mainly from explosive remnants of war not attributable to any party to the conflict.

10. Civilian casualties caused by ground engagement and non-suicide improvised explosive devices decreased. Civilian casualties caused by suicide and complex attacks, however, increased by 8 per cent, and those caused by aerial strikes by 5 per cent.

11. UNAMA/OHCHR documented a decrease in civilian casualties in all parts of the country, with the exception of the south-eastern and western regions. Decreases in civilian casualties from ground fighting between pro-government forces and anti-government elements, mainly due to the decreases attributed to the former, largely contributed to the overall reduction in civilian casualties in most of the country.

12. In 2017, UNAMA/OHCHR documented an 8 per cent increase in civilian casualties resulting from complex and suicide attacks, mainly in the central, south-eastern, southern and western regions. In the south-eastern region, civilian casualties from such attacks increased nearly ninefold, and sevenfold in the southern region.

13. ISIL – Khorasan Province claimed responsibility for 20 incidents that caused 683 civilian casualties, a 9 per cent decrease in casualties from similar incidents in 2016. Of these, 657 casualties resulted from suicide and complex attacks.

14. On 31 May 2017, UNAMA/OHCHR recorded the single largest incident in Kabul, when a vehicle-borne improvised explosive device killed 92 civilians and injured 491. This was also the single deadliest incident registered since systematic recording of civilian casualties by UNAMA began in 2009. No group claimed responsibility for the incident.

[2] Figures provided by the International Organization for Migration and the Office for the Coordination of Humanitarian Affairs. See also www.humanitarianresponse.info/en/operations/afghanistan.

15. In 2017, UNAMA/OHCHR released five public reports (including two special reports) highlighting civilian deaths and injuries, analysing key trends and addressing recommendations to all parties to the conflict.[3]

A. Anti-government elements

16. Between 1 January and 30 November 2017, UNAMA/OHCHR attributed 6,252 civilian casualties (2,126 deaths and 4,126 injured) to anti-government elements. These figures account for 65 per cent of the total number of civilian casualties, and reflect a decrease of 5 per cent when compared with the same period in 2016. The leading cause of civilian casualties was combined improvised explosive device tactics (namely, non-suicide improvised explosive devices and suicide and complex attacks together), which accounted for 39 per cent of the total number of civilian casualties. The second leading cause of civilian casualties was ground engagements, causing 3,267 civilian casualties (779 deaths and 2,488 injured), representing 34 per cent of the overall rate, a 19 per cent decrease compared with the same period in 2016. Suicide and complex attacks accounted for 22 per cent of all civilian casualties, while non-suicide improvised explosive devices accounted for 17 per cent.

17. In 2017, UNAMA/OHCHR documented 1,097 deaths and injuries resulting from targeted and deliberate attacks on civilians, a 2 per cent decrease compared with the same period in 2016. On 5 August, in Sayyad district in Sari Pul province, Mirza Olang village, a strategically important, predominantly Shia Hazara-inhabited village that had long fought against control of anti-government elements, was attacked by a group of anti-government elements comprising Taliban and local self-proclaimed ISIL/Da'esh of uncertain allegiance. They occupied the village and deliberately shot dead 24 civilians (19 men and five boys) and several hors-de-combat members of pro-government militia.

18. Between January and November 2017, UNAMA/OHCHR recorded a 29 per cent increase in civilian casualties related to attacks against religious figures and places of worship compared with the same period in 2016. Such attacks, mostly suicide and complex attacks, caused 486 civilian casualties (197 deaths and 289 injured). UNAMA/OHCHR attributed 39 of 40 attacks against religious figures and places of worship to anti-government elements.[4] It documented eight cases of sectarian attacks against Muslim Shia places of worship and worshippers, which caused 390 civilian casualties (141 deaths and 249 injuries). ISIL – Khorasan Province claimed responsibility for six incidents that led to 384 of these casualties (140 deaths and 244 injuries). Of those six incidents, four incidents took place in Kabul city and two in Herat city. Of the six incidents, the deadliest occurred on 20 October, when a suicide attacker lobbed a grenade into the women's section of an Imam-e-Zaman Shia mosque, in Kabul city, and detonated his suicide vest among the worshippers, killing 69 and injuring 60, including women and children. Claims of responsibility often included hateful language against Shia Muslims.

19. During the period under review, UNAMA/OHCHR recorded 229 conflict-related incidents of kidnapping or abduction involving 898 civilians; 80 of the victims were killed and 66 injured. While significant, this represents a sharp drop compared with 2016, when 1,844 civilians were abducted.

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[3] See 2017 First Quarter Civilian Casualty Data; *Afghanistan: Protection of Civilians in Armed Conflict*, midyear report 2017; Special Report on Attacks in Mirza Olang: 3 – 5 August 2017; and Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshippers (available from https://unama.unmissions.org/protection-of-civilians-reports).

[4] One targeted killing of a religious scholar/mullah was attributed to pro-government forces.

B. Pro-government forces

20. In 2017, UNAMA/OHCHR attributed 1,925 civilian casualties (685 deaths and 1,240 injured) to pro-government forces, a 26 per cent decrease compared with the same period in 2016. The decrease resulted mostly from a shift in conflict dynamics, the displacement of civilians from areas of protracted conflict, and measures taken by the Afghan National Defence and Security Forces to protect civilians, including during their military operations and through the relocation of some military bases away from civilian populated areas.

21. UNAMA/OHCHR documented 598 civilian casualties (272 deaths and 326 injured) from airstrikes by pro-government forces, a 5 per cent increase compared with the same period in 2016, amounting to 6 per cent of all civilian casualties. From 9 to 11 February, airstrikes by international military forces killed 26 civilians and injured six others – mainly women and children – in Sangin district, Helmand province. Conducted during operations targeting anti-government elements, the airstrikes appeared to hit civilian homes. They struck one home neighbouring a building used by anti-government elements and two other civilian homes in different areas, killing 20 children and five women, and injuring three children and a woman.

22. UNAMA/OHCHR noted positive developments during the period under review in government policies and mechanisms for civilian casualty mitigation. In October 2017, the National Security Council formally endorsed the national policy on civilian casualty prevention and mitigation, which is intended to strengthen measures taken by the Government to prevent conflict-related harm to civilians. The policy requires the Afghan National Defence and Security Forces to take specific measures to prevent civilian casualties when planning and engaging in military activities, to create a coordinated civilian casualty tracking mechanism, and to investigate all civilian casualty incidents. UNAMA/OHCHR actively supported the drafting of the policy and advocated for its endorsement.

23. On 9 August 2017, the Government deposited instruments of ratification of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and Protocols I to V thereto. This establishes new obligations to take measures and to allocate additional resources to protect civilians from explosive remnants of war.

24. On 17 October, UNAMA/OHCHR convened its annual protection of civilians dialogue in Kabul, bringing together high-level government and military representatives and members of the international protection community, to discuss plans to meet obligations under the Protocol on Explosive Remnants of War (Protocol V to the above-mentioned Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons) and the implementation of the national policy on the prevention and mitigation of civilian casualties. Government and military representatives pledged to enforce the policy at all levels, and to developing concrete plans of action to implement it and the said Protocol. The Resolute Support Mission of the North Atlantic Treaty Organization (NATO) promised continued support for planning and implementation of related activities.

IV. Children and armed conflict

25. During the period under review, the country task force on monitoring and reporting on children and armed conflict verified 1,531 incidents of killing and maiming, a decrease of 3 per cent compared with the same period in 2016. The task force verified cases of at least 812 children killed and 2,162 injured, a decrease of 9 per cent compared with the same period in 2016.

26. Between January and November 2017, ground engagements accounted for 45 per cent of child casualties, with 1,327 boys and girls killed and injured. Improvised explosive devices were the second leading cause for child casualties, killing or injuring 496 children, followed by explosive remnants of war, which caused 481 deaths and injuries among children. Child casualties from aerial operations increased by 35 per cent compared with the same period in 2016, killing and injuring 263 children.

27. Targeted killings resulted in 126 child casualties, and suicide attacks by anti-government elements caused 142 child casualties, with the highest numbers recorded in the central region, with 69 child casualties. The task force recorded 43 child casualties due to search operations, representing a more than threefold increase compared with the same period in 2016.

28. Anti-government elements were responsible for 44 per cent of all verified child casualties, while 27 per cent of the child casualties were attributed to pro-government forces. Another 18 per cent of child casualties were attributed to both anti-government elements and pro-government forces, and about 1 per cent to cross-border shelling from Pakistan. The remaining 10 per cent could not be attributed to any specific party to the conflict.

29. During the period under review, the task force verified 62 incidents affecting education and education-related personnel, a 2 per cent increase compared with the same period in 2016. Such incidents included attacks on schools and education-related personnel, threats, intimidation and harassment, abduction of education-related personnel and the military use of schools. It attributed 49 such incidents to anti-government elements; seven to pro-government forces; three to both anti-government elements and pro-government forces; and two to Pakistani military forces. One incident could not be attributed to any specific party to the conflict. In addition, the task force documented 10 incidents involving the military use of schools and a teacher training centre. Six of these incidents were attributed to the Afghan National Defence and Security Forces, two to the Taliban and two to ISIL – Khorasan Province.

30. Between January and November 2017, the task force verified 54 incidents affecting access to health facilities and health personnel, a decrease compared with the same period in 2016, when 80 incidents were verified. Fifty incidents were attributed to anti-government elements, and three to pro-government forces, including the Afghan National Army, the Afghan National Police and a pro-government militia; one could not be attributed.

31. In September 2017, 31 health clinics in Uruzgan Province were closed for two and a half months owing to threats by Taliban. The Taliban also forcibly closed 25 health clinics in Badghis Province in September 2017. During the period under review, the task force also verified two incidents of military use of health facilities by the Afghan National Army in Baghlan Province.

32. The task force verified 30 incidents of underage recruitment involving 115 boys, mainly used for planting improvised explosive devices, transporting explosives, conducting suicide attacks, and spying. This figure represents an increase when compared with the 88 children verified during the same period in 2016. The task force attributed the recruitment of 103 boys to anti-government elements and the recruitment of 12 boys to pro-government forces, including the Afghan National Police (seven), the Afghan Local Police (four) and the National Directorate for Security (one). In July 2017, in Chughcharan district, Ghor Province, ISIL – Khorasan Province recruited 11 children and trained them to carry out attacks.

33. The task force documented and verified nine incidents of abduction, involving at least 20 children. The Taliban perpetrated eight incidents involving 18 children, and ISIL – Khorasan Province perpetrated one incident involving two. On 2 November 2017, Taliban fighters abducted four male children (aged 4, 10 and 11 years) in Bilcharagh district, Faryab Province. According to UNAMA/OHCHR sources, the abduction had the aim of

pressuring their fathers (commanders of a pro-government militia group) to withdraw from frontline fighting against Taliban.

34. The task force documented six incidents of rape and sexual violence against children during the period under review. Three incidents involving three boys were verified: one perpetrated by the Taliban, one by the Afghan Local Police, and one by the Afghan Border Police.

35. Anti-government elements continued to deny humanitarian access to areas under their control. The task force documented 27 incidents, a 61 per cent decrease compared with the same period in 2016, when 70 incidents were verified. Incidents included abductions, threats and acts of intimidation, the killing and injury of humanitarian staff (mostly deminers), the denial of access to vaccinators, and damage to or closure of facilities run by humanitarian organizations. The task force attributed all these incidents to anti-government elements, including 21 to the Taliban, three to ISIL – Khorasan Province and three to undetermined elements.

36. UNAMA/OHCHR noted continued progress by the Ministry of the Interior with regard to the expansion of child protection units within the Afghan National Police recruitment centres, where they are responsible for detecting underage candidates. During the period under review, the Ministry inaugurated 11 additional child protection units (in Kandahar, Helmand, Zabul, Nimroz, Kapisa, Khost, Maidan Wardak, Panjshir, Parwan, Ghazni and Logar provinces), bringing the total number to 32. Only two provinces have yet to be covered. The recruitment centres of the Afghan National Police rejected 294 underage applicants in 18 provinces thanks to these units.

37. In March 2017, the revised Penal Code was passed by presidential decree during parliamentary recess, published in May in the Official Gazette (No. 1260), and transmitted to Parliament, where it remained under review at the time of reporting. It entered in force on 15 February 2018. It includes, further to advocacy by UNAMA/OHCHR and others, provisions prohibiting and criminalizing the recruitment and use of children by armed forces (but not by armed groups), and a new chapter criminalizing the practice of *bacha bazi* (maintaining a male or intersex child for the purpose of sexual entertainment).

38. In November 2017, concerted advocacy by UNAMA and the United Nations Children's Fund convinced the Government to transfer 50 children detained on charges related to national security from the maximum-security adult detention facility in Parwan to the juvenile rehabilitation centre of Kabul Province, to ensure that they have better access to legal, educational and social services.

39. The National Directorate for Security made efforts to ensure that the cases of children detained on charges related to national security were dealt with in their provinces of origin, in accordance with its directive 0423. According to the Directorate, between January and November 2017, 110 children were brought to provincial juvenile rehabilitation centres for further processing of their cases.

V. Protection from arbitrary detention and respect for fair trial rights

40. On 24 April, UNAMA/OHCHR released its fourth joint public report on detention since 2011. The report focuses on the implementation of the 2015 national plan on the elimination of torture, covering the period between January 2015 and December 2016. Of the 469 detainees on conflict-related charges interviewed by UNAMA/OHCHR, 39 per cent gave credible accounts of having experienced torture or other forms of cruel, inhuman and degrading treatment during arrest and interrogation in numerous detention facilities run by

the National Directorate for Security and the Afghan National Police. The report also documented a pervasive lack of accountability for such practices.

41. Prior to the release of the report, the Government of Afghanistan indicated its intention to withdraw its reservation to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Cabinet approved in principle the decision to ratify the Optional Protocol to that Convention. The implementation of these commitments was pending at the time of reporting. In its voluntary pledges and commitments submitted as part of its candidacy for membership of the Human Rights Council (A/72/377, annex), the Government confirmed its continued commitment to ratifying the Optional Protocol.

42. In March, the Government issued by presidential decree a law on the prohibition of torture and a new Penal Code, which both contain a definition of torture more in line with the Convention against Torture. In September, the President endorsed an annex to the law on the prohibition of torture, with a provision allowing victims of torture to bring legal claims for redress before criminal and civil courts.

43. In April and May 2017, the Committee against Torture reviewed the second periodic report of Afghanistan. In its concluding observations (CAT/C/AFG/CO/2), adopted on 10 May, the Committee expressed deep concern at the allegations of widespread use of torture and ill-treatment and a culture of impunity. It called upon Afghanistan to make sure that all allegations were investigated promptly, thoroughly and impartially, and that alleged perpetrators were prosecuted. It also requested the Government to provide, by 12 May 2018, information on the steps taken on several time-critical recommendations contained in its concluding observations. It also asked the Government to submit its plans for implementing the remaining recommendations.

VI. Death penalty

44. The new Penal Code significantly reduced the number of crimes for which the death penalty applies. On 29 November 2017, however, five men were executed at Pul-i-Charki prison, in Kabul, on charges of abduction and murder. They had been tried, found guilty and sentenced to death by the primary court of Herat on 18 October 2016; the sentence was upheld by the Court of Appeal on 29 November 2016, and by the Supreme Court on 17 June 2017. UNAMA/OHCHR continued to advocate for compliance with fair trial guarantees, in accordance with the Constitution, the Criminal Procedure Code and the International Covenant on Civil and Political Rights. At the time of reporting, 720 persons were still on death row.

VII. Elimination of violence against women and promotion of women's rights

45. The prevalence of violence against women and harmful traditional practices remained a matter of concern. Harmful traditional practices continued to be confused as belonging to Islamic law or teachings despite their criminalization under the 2009 law on the elimination of violence against women. Application of the law by law enforcement and judicial practitioners has consequently been uneven.

46. UNAMA/OHCHR monitored and documented cases of violence against women and girls, monitored the implementation of the law on the elimination of violence against women, and engaged in advocacy to promote rights of women and girls. While the said law remains the main legal framework protecting women and girls from violence, its facilitation

of mediation by permitting complainants to withdraw their cases at any stage of proceedings, except in the case of five serious offences,[5] remains a major shortcoming.

47. From January to November 2017, UNAMA/OHCHR documented 537 cases of alleged violence against women, including 46 cases of honour killing and 116 cases of murder. In 96 of those cases, the victims were minors. Of the 51 cases documented for mediation, 22 were mediated by informal justice mechanisms. Focus group discussions held by UNAMA/OHCHR between 19 January and 30 August 2017 with 933 participants (including 446 women) showed that, in the absence of a legal framework or guidelines on the mediation of cases of violence against women, mediation adversely affected women survivors. Respondents from 30 of the 34 focus group discussions recommended regulation. A draft regulation on mediation, sent to the Ministry of Justice in August 2016 for submission to the Council of Ministers for their approval and endorsement, has yet to be finalized.

48. The Government opened courts trying cases of violence against women in 15 provinces, plus Kabul. Offices responsible for prosecuting cases of violence against women were established in all 34 provinces, of which 25 have female prosecutors. Despite this progress, women's access to justice remained difficult owing to, inter alia, distance from and the cost of travel to provincial capitals, where most judicial services are located; the fluid security situation, which makes its risky for women to travel; and the requirement of a male escort, which limits confidentiality.

49. On 11 February, in Wama district, Nuristan Province, a 17-year-old girl and a man were killed near a police station where they had sought protection. They were allegedly killed by family and community members who had accused the couple of eloping. From January to November 2017, UNAMA/OHCHR documented four incidents of parallel justice punishment by anti-government elements on accusations of moral crimes, such as eloping and committing or attempting to commit *zina* (having sex outside of marriage), which led to the execution of four women, including one by stoning and lashing. Such practices violate the Constitution of Afghanistan and amount to grave human rights abuses.

50. On 18 April 2017, the wife of the President launched a national plan of action to eliminate early and child marriage (2017–2021). The plan is aimed at addressing the complex nature of early and child marriage in Afghanistan, encouraging stakeholders to consider its root causes and to identify areas for improvement in access to and the delivery of effective and efficient services. To date, however, implementation has been slow and funds lacking.

51. On 8 March 2017, the Government launched a national priority plan on women's economic empowerment, which is aimed at expanding women's access to economic resources, empowering girls with information, skills and formal education, and promoting legal and policy framework to promote women's rights. Pursuant to the plan, on 8 August, the Office of the Chief Executive established the Executive Committee on Women's Empowerment to facilitate high-level coordination among stakeholders.

52. On 5 March 2017, the Ministry of Foreign Affairs commenced drafting the third periodic report of Afghanistan, to be submitted to the Committee on the Elimination of Discrimination against Women; An initial draft of the report, due in July 2017, was prepared with support of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and is currently under review; the date for the likely submission of the report to the Committee remains to be determined.

[5] Rape, forced prostitution, recording and publishing the identity of victims of violence against women, burning or using chemicals or poison to injure or intimidate, and forced self-immolation.

53. During the period under review, the proportion of women in the Afghan National Police rose by 8 per cent compared with the same period in 2016 (from 3,126 to 3,379 policewomen, as at 21 November 2017). To address sexual harassment against women in the police force and the workplace, the Ministry of the Interior worked on finalizing its internal complaints procedure, thereby implementing the decision made in July 2016 to establish such a mechanism, which, pursuant to the presidential order issued in 21 November 2016 instructing all security sector agencies to improve workplace safety for women. According to the report of the Afghanistan Independent Human Rights Commission released on 25 November 2017, entitled "Situation of Women Employed in Defense and Security Sectors", of 579 female respondents in the police force, 20 per cent claimed that they had experienced sexual harassment in the workplace. In the report, the Commission also noted, however, that the Ministry of the Interior had not recorded any complaints of sexual harassment of policewomen since March 2017.

54. More generally, the mechanisms to combat sexual harassment against women in the workplace remained largely ineffective owing to underreporting, which is mainly due to the social stigma attached to the issue. Between March and November 2017, the Ministry of Women's Affairs registered one complaint, while a study by the Women and Children Legal Research Foundation revealed that, between March 2016 and March 2017, 10 complaints were registered with the provincial commissions on the elimination of harassment against women: two in Herat Province and eight in Bamyan Province.[6] On 9 January 2017, the Joint Commission of the Upper and Lower Houses of Parliament approved the law on the elimination of harassment against women and girls, which was published in the Official Gazette on 31 December.

55. Despite some progress, women continued to face obstacles to their participation in public life, including social and economic activities. Challenges include the security situation, restrictions imposed by anti-government elements, and harmful traditional practices. Targeted attacks and threats against women, particularly those employed by the Government, continued. On 28 June, two policewomen were targeted and killed by the Taliban in Faizabad City, Badakhshan Province. On 29 July, a local female journalist was threatened by the Taliban, in Farah City, Farah Province.

56. At the time of writing, the new Penal Code was under review by Parliament. The Code improves the State's compliance with international standards in criminal justice, and also criminalizes the forced virginity test, a practice prevalent within law enforcement agencies adopted to "prove" the commission of adultery. In August 2017, however, these improvements were overshadowed by the removal of the entire chapter on violence against women, on the instruction of the Government. This decision followed a campaign by women's groups that feared that Parliament may amend the chapter and leave women with less protection than in the current 2009 law.

57. The Government pursued its efforts to increase women's role in peace processes, an imperative that was reiterated by 105 women who participated in the fourth Afghan Women's Symposium, held from 15 to 17 May. On 2 July, five new female members were nominated to the High Peace Council, the representation of women thereby increasing to 12 members in both the Executive Board (four) and the General Assembly (eight). The 480 members of the peace councils include 65 women: 12 in the High Peace Council and 53 in the provincial peace councils. Women also participate in all five committees of the High Peace Council; however, only one of the seven sections of the Joint Secretariat of the Council is led by a woman.

[6] See Women and Children Legal Research Foundation, "Call to End Sexual Harassment Against Women and girls in Afghanistan", 1 January 2018.

58. While the Government continued to implement the national plan on Security Council resolution 1325 (2000) on women, peace and security, its efforts were hampered by lack of funding. On 23 October, the Ministry of Foreign Affairs announced that a revised budget of $52 million for the plan had been finalized in September; the budget was, however, further revised in December 2017. The Government has been engaging with donors on funding mechanisms.

59. Despite some progress, women's participation in positions of decision-making remained low. On 21 February, the Central Statistic Organization of Afghanistan released the results of a survey on the role of women and men in decision making, which indicated that the share of women in decision-making had increased only by 0.8 per cent during 2013-2016, from 9.9 per cent in 2013 to 10.7 per cent in 2016.[7]

60. Similarly, the representation of women in the civil service remains below the Government's target of 30 per cent. UNAMA/OHCHR continued to advocate for an increase in women's participation in the Afghan civil service, political and social spheres of life, and in peace negotiations, and conducted activities to raise public awareness of women's rights. Between 17 October and 22 November, it organized 13 events in 12 provinces for the Global Open Day dialogue, with 364 participants (including 303 women) from 21 provinces. The process culminated in an event held in Kabul, on 22 November, which brought together 31 women and five men from civil society, including women's organizations, the Government and key electoral stakeholders. The dialogue focused on strengthening the participation of women in all aspects of the electoral process across Afghanistan. UNAMA/OHCHR compiled the information gathered during these consultations and informally disseminated a non-public report. The report will also inform UNAMA/OHCHR advocacy with the Government on increasing the participation of women at all stages of the elections scheduled for 2018 and 2019.

VIII. Peace and reconciliation, including accountability and transitional justice

61. In 2017, UNAMA/OHCHR engaged with civil society, human rights defenders and the Afghanistan Independent Human Rights Commission to end impunity for human rights violations, to support efforts to end discrimination, and to promote inclusive peace agreements. In particular, it supported efforts to promote the centrality of the human rights of women, girls, minorities and other vulnerable groups, and their active participation in the political and social spheres, including in peace processes.

62. Following the agreement reached in October 2016 between the Government and the armed group Hizb-i Islami, the group's leader, Gulbuddin Hekmatyar, returned to Kabul in May 2017. OHCHR remained concerned about provisions in the agreement granting the group's leaders immunity and including the release of its prisoners, which could preclude the prosecution of individuals who may be legally responsible for war crimes, genocide, crimes against humanity and other gross violations of human rights. Two batches of 55 and 13 prisoners were released in 2017, with hundreds more envisaged.

63. UNAMA/OHCHR closely followed developments at the International Criminal Court and the formal request, made on 20 November, by the Chief Prosecutor of the Court to the Pretrial Chamber for judicial authorization to commence investigation of alleged war crimes and crimes against humanity committed in Afghanistan since 1 May 2003. Owing to the context in Afghanistan, the Pretrial Chamber allowed victims of alleged war crimes and

[7] Central Statistics Organization, "Women and Men in Decision Making", 2016, Phase III, p. 27.

crimes against humanity an extended period, ending on 31 January 2018, to make representations.

64. UNAMA/OHCHR engaged with the 20 organizations grouped in the Transitional Justice Coordination Group to promote efforts for sustainable and justice-based peace and reconciliation processes. In a press statement issued on 26 November 2017, the group expressed its support for the decision of the Prosecutor of the International Criminal Court. Moreover, it requested the Government to fulfil its obligations under the Rome Statute and to support and protect victims, witnesses and personnel of the International Criminal Court visiting the country. The Government renewed its commitment to cooperating with the Court in its voluntary pledges as a candidate to the Human Rights Council (see A/72/377. annex), and invited the Court to visit Afghanistan.

65. UNAMA/OHCHR continued to monitor peace and reconciliation efforts and to foster the inclusion of civil society in the peace process by promoting space for civil society, and enhancing its advocacy skills and understanding of international human rights norms and standards. With the Afghanistan Independent Human Rights Commission, UNAMA/OHCHR organized round-table discussions and seminars to promote civil society engagement in peace processes and capacity-building for civil society organizations. It also supported networks in their engagement with human rights monitoring and reporting. During 2017, UNAMA/OHCHR conducted 59 events, gathering civil society activists, human rights defenders, the media and journalists to discuss such issues as the promotion of human rights, freedom of expression, the protection of journalists, widening the space for civil society, and women's participation. The events, held in 27 provinces, saw the participation of 1,475 people (approximately one third of participants were women).

66. UNAMA/OHCHR finalized 34 provincial road maps for peace resulting from local consultations conducted over recent years. Four of the road maps were discussed with local communities in a peacebuilding project of a partner organization in four provinces (Bamyan, Kunduz, Parwan and Balkh); the findings were discussed with the Afghan High Peace Council in a national conference in October 2017. The road maps will be launched in early 2018.

67. UNAMA/OHCHR maintained its constructive engagement with the Afghanistan Independent Human Rights Commission, cooperating on regular basis on issues including the protection of civilians, and support for human rights defenders and survivors of violence against women, while also consulting at the senior level on sensitive cases and issues in its engagement with United Nations human rights mechanisms.

68. UNAMA/OHCHR participated in broadcasting 18 public awareness-raising radio programmes for the promotion and protection of human rights, particularly women's rights, freedom of expression and protection of civilians, through local radios in the south and central regions.

IX. Safety of journalists and media workers

69. UNAMA/OHCHR closely monitored the application of the Procedures for Ensuring the Safety and Security of Journalists and the Media,[8] implemented jointly by the Government and a federation of Afghan media organizations and journalists, by observing the work of the media and government joint committee for the safety and security of journalists. It observed that, despite the approval of the access to information law by the

[8] On file with OHCHR.

Government, individuals and journalists faced challenges in obtaining accurate information from government sources.

70. In 2017, civil society actors, including human rights defenders and media personnel, faced more threats and restrictions. Attacks against media workers and women activists by anti-government elements are indicative of the challenges faced by civil society. Human rights defenders also faced arrests and acts of intimidation from the security authorities on charges related to national security.

71. Anti-government elements subjected journalists and media outlets to threats, acts of intimidation, deliberate attacks and killings, labelling specific outlets "military targets". Two television stations, Shamshad TV in Kabul, and Radio-Television Afghanistan in Nangarhar, were attacked by ISIL – Khorasan Province. A local radio station was attacked and burned down in Ghor Province.

72. In 2017, 14 media workers, including three journalists, were killed. Four of them were targeted during the attack by the ISIL – Khorasan Province on Radio-Television Afghanistan, on 17 May, in Nangarhar; one was targeted by unidentified gunman in Baghlan; and four were among the casualties in an explosion in Kabul, on 31 May. Two others were killed in a suicide attack on the Afghan Parliament television station.

73. In addition, reports were received of State actors or local power brokers subjecting journalists to beating, arbitrary detention and harassment, and of obstructing access to information and reporting.

74. In 2017, UNAMA/OHCHR also verified threats against civil society activists and human rights defenders that created a climate of fear and further inhibited their ability to perform their work. It recorded 12 cases of such threats, mainly by anti-government elements, in the central, southern, north-eastern and south-eastern regions, and in the central highlands. On 18 July, a human rights defender from Badghis Province was threatened by the Taliban, and told to resign from his position.

75. The development, and subsequent adoption on 19 December 2016, of a protection strategy for human rights defenders by the Afghanistan Independent Human Rights Commission, including possibilities of temporary or permanent relocation of defenders at risk, is a positive step in the protection of defenders.

76. In July 2017, the Government introduced a draft law to replace the law on gatherings, demonstrations and strikes. After civil society organizations and the Afghanistan Independent Human Rights Commission expressed concerns at the potential limitations to freedom of assembly that the law may generate, it was amended and passed on 5 September, by presidential decree, before transmittal to the Parliament on 2 October. At the time of writing, Parliament had not yet taken action.

X. Cooperation with the United National human rights mechanism

77. In April 2017, UNAMA/OHCHR briefed the Committee against Torture in closed session ahead of the review of the second periodic report of Afghanistan. Exchanges were also held with the secretariat of the Committee on the Elimination of All Forms of Racial Discrimination, which has been awaiting the periodic report of Afghanistan for more than three decades. This issue has been added to the Government's workplan for 2018. The Government intends to submit its second to fifth reports to the Committee on the Rights of the Child by March 2018.

78. On 15 August 2017, the Government issued a standing invitation to all special procedures of the Human Rights Council. On 16 October, Afghanistan was elected by the General Assembly to be a member of the Human Rights Council for three years, starting from 1 January 2018. The Government is working to implement its voluntary pledges and commitments (see A/72/377, annex), which contain positive elements on strengthening the rule of law, the rights of women and children, internally displaced persons and refugees, and accountability. The Government is also committed to submitting in late 2018 its report for the third cycle of the universal periodic review, to be held in January 2019. UNAMA/OHCHR will support the Government in implementing these commitments.

XI. Conclusions

79. In 2017, the overall deterioration in security and the lack of resources for public policies had an adverse impact on the situation of human rights. Civilian casualties remained high, and continued conflict and insecurity gave rise to further political and economic uncertainty. The prospects for the achievement of a sustainable peace therefore remained limited.

80. Although the Government took steps to increase respect for women's rights, the actual participation of women in all spheres of life, including peace processes, remained low. Women also continued to suffer from various forms of violence and harassment.

81. The adoption of the new Penal Code opens a way towards the establishment of a progressive legal framework by criminalizing several harmful practices and introducing command responsibility; concerns remain, however, in particular since the removal of its provisions on violence against women.

82. Civic space remained subject to enormous constraints. Civil society actors, including human rights defenders, specifically women human rights defenders and activists, and journalists faced threats, acts of intimidation and harassment and, at times, deadly attacks.

83. While the decision of the Prosecutor of the International Criminal Court to move forward on the situation in Afghanistan may provide much needed accountability on major crimes, the few cases dated after 2003 on which the Court could investigate and possibly adjudicate may not be sufficient to satisfy the expectations of many Afghans for justice. Complementary initiatives at the national level are therefore required.

XII. Recommendations

84. The United Nations High Commissioner for Human Rights recommends that the Government of Afghanistan:

(a) Create a climate conducive to respect for human rights by expanding and implementing the legal framework and strengthening relevant institutions, and fulfil its voluntary pledges and commitments as presented to the General Assembly in support of its candidature to the Human Rights Council;

(b) Implement the national policy on civilian casualty prevention and mitigation, and finalize the related plan of action, which should include concrete objectives and measures to prevent casualties in the conduct of hostilities; strengthen

measures to investigate all incidents of conflict-related harm to civilians; and further strengthen the dedicated entity for the documentation of conflict-related incidents;

(c) Develop a plan of action to meet its obligations under the Protocol on Explosive Remnants of War (Protocol V) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

(d) Build and expand the capacity of the Afghan National Defence and Security Forces to adequately monitor, identify and prevent cases of underage recruitment by establishing child protection units in all provinces; address the lack of services and alternatives for children who have been rejected for recruitment by the Afghan National Defence and Security Forces owing to their young age or who have been released from active service;

(e) Ensure due process and full protection of the rights of children detained on allegations of national security-related charges by developing and enforcing operating procedures and regulations, in accordance with national and international juvenile justice standards, and by reviewing the cases of children who have been detained without trial for prolonged periods of time;

(f) Ensure that appropriate, child-specific provisions and adequate resources are included in any peace and reconciliation process;

(g) Ensure that victims of violations have an effective remedy; strengthen procedures to ensure gender-sensitive and inclusive reparations, including compensation for families of civilians killed and injured in conflict-related violence, and raise public awareness of these procedures; and pay special attention to ensuring equal and effective access for women and girls;

(h) Increase efforts to prevent, punish and eradicate all forms of violence against women through the adoption and implementation of legal and policy frameworks compliant with international human rights standards; strengthen the capacity of the criminal justice system to ensure accountability; and conduct countrywide campaigns to raise women's awareness of the remedies available in cases of violence, including mediation procedures;

(i) Expedite completion and submission of the State's periodic report to the Committee on the Elimination of Discrimination against Women;

(j) Ensure the swift implementation of the national plan on Security Council resolution 1325 (2000) by providing dedicated human and financial resources and creating accountability mechanisms to track and report on its effective application, so as to ensure women's meaningful participation in all peace and reconciliation processes;

(k) Engage civil society meaningfully in all stages of peace and reconciliation processes, and protect the space for civil society actors, particularly women and girls, working on peace and reconciliation processes and transitional justice initiatives;

(l) Implement a robust vetting process to prevent members of armed groups involved in serious crimes, such as violations of international humanitarian law and international human rights law, from being recruited by security or government institutions as part of any peace settlement, while ensuring that no blanket amnesty or immunity is granted and that victims' rights are respected;

(m) Ensure that impunity for violations committed against journalists and civil society actors ends, that all violations are investigated promptly and

thoroughly, and that perpetrators are brought to justice; and ensure that journalists and civil society actors enjoy their legitimate rights to freedom of expression and to have access to information, without fear of reprisal or attack;

(a) Establish a de jure moratorium on the death penalty, and respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular article 6 of International Covenant on Civil and Political Rights and the minimum standards set out in the annex to Economic and Social Council resolution 1984/50; improve the ability of the judiciary to guarantee fair trials and due process in all criminal proceedings, pursuant to article 14 of the Covenant; and consider the experiences of other countries that have faced mass atrocities and violence and have moved towards the abolition of the death penalty while seeking justice for victims;

(o) Inform the Committee against Torture, by 12 May 2018, about plans for implementing some or all of the recommendations contained in its concluding observations on the second periodic report of Afghanistan (CAT/C/AFG/CO/2);

(p) Initiate an inclusive process to prepare the long-pending report to the Committee on the Elimination of Racial Discrimination, and open a public debate on issues of ethnic and religious diversity and on discrimination.

85. The United Nations High Commissioner for Human Rights recommends that anti-government elements:

(a) Cease the deliberate targeting of civilians (including government officials, journalists, tribal elders, religious leaders, human rights defenders, judges and prosecutors) and civilian locations, and of places of worship and culture, in recognition of their civilian nature guaranteed under international humanitarian law;

(b) Issue statements recognizing the important role of civil society actors, notably human rights defenders and journalists, including women and girls, and their right to freedom of expression and critical opinion, and denouncing attacks against the media and civil society, acknowledging and respecting their civilian status;

(c) Cease the use of improvised explosive devices in all areas frequented by civilians, and the use of illegal pressure-plate improvised explosive devices and the firing of explosive weapons, particularly mortars, rockets and grenades from and into civilian-populated areas; and respect at all times the civilian status of humanitarian deminers;

(d) Uphold statements by national leaders regarding the human rights of women and girls in areas under Taliban influence, in particular by ceasing attacks and threats against girls' education, teachers and the education sector in general;

(e) Cease indiscriminate attacks against members of religious minorities and their justification using a language of hatred.

86. The United Nations High Commissioner for Human Rights recommends that all parties to the conflict:

(a) Refrain from targeting civilian objects, including schools and hospitals, and take the measures necessary to cease indiscriminate attacks against civilian objects;

(b) Facilitate humanitarian access to all people, and ensure that human rights actors are able to monitor and report on attacks affecting civilians and civilian objects, in accordance with international humanitarian law and international human rights law;

(c) Ensure accountability for the perpetrators of attacks against civilians and civilian objects, in particular when such attacks amount to violations of international humanitarian law or international human rights law;

(d) Foster an environment conducive for civil society to operate safely and freely, including human rights defenders, journalists and other media workers, in particular women and girls;

(e) Guarantee the protection of civil society actors, including journalists and human rights defenders, as civilians under international humanitarian law, and respect their right to monitor and report freely on the armed conflict, without fear of attack or reprisal for their work.

87. **The United Nations High Commissioner for Human Rights recommends that the international community:**

(a) Support the Afghan security forces in their efforts to prevent civilian casualties, and protect civilians from the harm of conflict-related violence;

(b) Encourage the Government of Afghanistan to deliver on its pledges and commitments made before it became a member of the Human Rights Council, including with regard to cooperation with the International Criminal Court;

(c) Support the Government's efforts to advance the women, peace and security agenda, including through the implementation of the national plan on Security Council resolution 1325 (2000), through technical support, resources and targeted advocacy;

(d) Advocate with parties to the conflict for women's effective and meaningful participation in informal and formal peace negotiations and the protection of their rights through future peace agreements;

(e) Promote a just and inclusive peace process by supporting civil society actors in their transitional justice efforts and their active participation in peace and reconciliation processes;

(f) Ensure that the rights of victims and their families and witnesses are respected and protected in peace and reconciliation processes and settlements;

(g) Assist the Government, through resource mobilization, to implement fully its commitments under the plan of action on children in armed conflict.

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Technical assistance and capacity-building

Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, in the United Nations High Commissioner for Human Rights describes the situation of human rights in Libya and the support provided to key Libyan institutions with regard to the protection of civilians, individuals hors de combat and groups in focus, and concerning the administration of justice, the rule of law and transitional justice. He concludes the report with recommendations addressed to all parties to the conflict, the Government of Libya, the international community and the Human Rights Council.

* The present report was submitted late owing to a technical error in the submission process.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to Council resolution 34/38, in which it requested the United Nations High Commissioner for Human Rights to present to the Council a report on the effectiveness of technical assistance received by the Government of Libya to improve the situation of human rights. It covers the period from 1 January to 31 December 2017.

2. The report was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the human rights mandate of UNSMIL. The Director of the UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner in Libya.

II. Context

3. The Presidency Council, which was established on 17 December 2015 under the Libyan Political Agreement, continues to struggle to assert its control over the country. Powerful armed groups and other Libyan actors remained opposed to the Agreement. The House of Representatives has yet to endorse the Government of National Accord proposed by the Presidency Council in 2016. On 20 September, the Special Representative of the Secretary-General for Libya announced a plan of action that had been adopted by the Security Council, aimed at ending the political stalemate. The plan proposed limited amendments to the Agreement, a national referendum on the Constitution, and parliamentary and presidential elections by September 2018. The United Nations facilitated two rounds of meetings of a joint drafting committee of the House of Representatives and the High Council of State on amendments to the Agreement. As at the end of 2017, no agreement had been reached.

4. On 29 July, the elected Constitution Drafting Assembly voted and approved the draft constitution, which is expected to be put to a popular referendum for adoption. The vote was challenged on procedural grounds in the Administrative Court of Al-Bayda, which on 16 August issued a provisory decision to suspend the referral of the draft to the legislature.

5. By May 2017, the Presidency Council had made significant territorial and political gains against the defunct "Government of National Salvation"[1] and affiliated armed groups, and had consolidated its control over the capital, Tripoli, with support from powerful Tripoli-based armed groups. By mid-November, armed groups allied to the Presidency Council had taken control of Wershefana, a strategic location south of Tripoli. Despite the consolidation of the Presidency Council, armed groups across the country remained the most powerful actors on the ground, contributing to persistent insecurity and abuses of human rights. In the light of the legislative vacuum, a caretaker government headed by Prime Minister Fayez Serraj has been performing ministerial functions, but has been struggling to meet the needs of the population. The economic situation and the provision of public services deteriorated further, leading to frequent power cuts, liquidity shortages and the devaluation of the Libyan currency. Common crimes and acts of political violence continued unabated.

[1] The "Government of National Salvation" controlled Tripoli before the relocation of the Presidency Council in April 2016. Up until May 2017, it retained control of several strategic areas of Tripoli.

6. The Libyan National Army consolidated its control over most of eastern Libya, with the exception of the city of Derna.[2] By November, following protracted fighting in Benghazi that had broken out in mid-2014, the Libyan National Army overran areas previously controlled by the Benghazi Revolutionaries Shura Council and its allies. Throughout 2017, the Libyan National Army also increased its presence in southern Libya, including in the Sharara oil fields.

7. Since December 2016, groups pledging allegiance to the so-called Islamic State in Iraq and the Levant (ISIL) no longer control any territory in Libya, but have remained active, particularly south and south-west of Sirte, and carried out several deadly attacks. On 4 October, ISIL claimed responsibility for a complex attack on the Misrata court complex, involving the use of explosives and direct gunfire, which left four men dead (in addition to the three perpetrators) and another 41 injured.

8. Hundreds of armed groups continued to operate throughout Libya, many nominally affiliated with the ministries of Defence, the Interior and Justice. While receiving salaries from central State funds, they were not under its effective command and control. They controlled borders, strategic installations and localized areas, including detention centres holding thousands of people. Action to remove law enforcement powers from armed groups, as foreseen in the Libyan Political Agreement, and demobilization, disarmament and reintegration, had not yet been taken.

9. OHCHR, through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, continued to monitor and report on the situation of human rights in Libya, including through increased field visits, particularly to the capital. UNSMIL/OHCHR engaged in regular dialogue with the authorities, armed groups, civil society and other stakeholders in Libya. The impact and effectiveness of technical assistance remained limited owing to restricted access to parts of Libya, political divisions and prevailing impunity, which all created an environment of intimidation and fear, and inhibited interlocutors, including officials, civil society and survivors of violations and abuses, from sharing information and engaging on human rights issues.

10. On 10 October, the United Nations High Commissioner for Human Rights visited Tripoli, where he held discussions with government officials, including the Prime Minister, the Minister of Justice and Minister of the Interior, and the head of the Department for Combating Illegal Migration. He visited a prison and a camp for Tawerghans displaced since the 2011 conflict. He also engaged in a dialogue with members of Libyan civil society and women human rights defenders. During his visit, the High Commissioner raised particular concerns with regard to prolonged arbitrary detention and the situation of migrants, internally displaced persons and human rights defenders. Libyan officials reiterated their commitment to respecting human rights and to working with the United Nations and other stakeholders towards the implementation of human rights law and standards.

11. Libya is a State party to seven United Nations core human rights treaties, namely, the International Covenant on Civil and Political Rights and the first Optional Protocol thereto, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention

[2] Derna remained under the control of the Derna Mujahedeen Shura Council, a coalition of Islamist-leaning armed groups, who ousted the so-called Islamic State from the city in 2015.

on the Rights of the Child and two of the Optional Protocols thereto. It is also a party to the African Charter on Human and Peoples' Rights.

12 Libya has obligations to respect, protect, promote and fulfil the human rights of all persons within its territory and of those subject to its jurisdiction, without discrimination. It also has the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including by providing reparations and guarantees of non-repetition, and to investigate and bring to justice those responsible.

13. International humanitarian law also applies to the non-international armed conflict that continues in Libya. The State is a party to the four Geneva Conventions and Additional Protocols I and II. Of particular relevance are common article 3 to the Geneva Conventions and Additional Protocol II, which contain protections applicable to civilians and other persons not taking a direct part in hostilities, as well as applicable norms of customary international humanitarian law.

III. Protection of civilians and of individuals hors de combat

A. Indiscriminate attacks and other violations of international humanitarian law

14. Under the Libyan Political Agreement, all armed factions committed to complying with Libyan legislation and international humanitarian and human rights law. Crimes under international law may also be prosecuted by the International Criminal Court, following referral of Libya to the Court by the Security Council in resolution 1970 (2011), pursuant to article 13(b) of the Court's statute.

15. Information obtained by UNSMIL/OHCHR shows that, throughout 2017, armed groups and other actors continued to carry out indiscriminate attacks, often in civilian and residential areas, heedless of their impact on civilians or civilian objects. Such attacks included the use of mortars, artillery, Grad rockets, mines, booby traps and improvised explosive devices. Such attacks, resulting in civilian casualties, were conducted across Libya, including in Al-Zawiya, Benghazi, Derna, Tripoli and Sabratha.

16. From 1 January to 31 December, UNSMIL/OHCHR documented 371 civilian casualties: 161 killed (104 men, 18 women, 37 children, and two individuals whose sex and/or age could not be determined) and 210 injured (124 men, 26 women, 39 children, and 21 individuals whose sex and/or age could not be determined). The largest number of civilian casualties was recorded in Benghazi. The leading causes of death were indiscriminate use of gunfire, explosive remnants of war, airstrikes, shelling and improvised explosive devices.

17. Incidents documented by UNSMIL/OHCHR included attacks on recreational areas, camps for internally displaced persons, detention facilities and private farms. For example, on 17 April, the Al-Kani armed group opened fire on a family home in the city of Tarhouna, leading to the death of a paralysed elderly man and nine other men, and the injury of two men and a 14-year-old boy. On 19 May, two men and three boys were killed and 20 boys and men were injured in the city of Salouq in a vehicle-borne improvised expolosive device attack in front of a mosque. On 4 July, two women and three children were killed, and three women and three children were injured when a Tripoli beach was shelled. From 17 September to 6 October, armed clashes in the city of Sabratha led to the death of least four civilian men and one woman, while six civilian men, two women and four children were injured. On 30 October, unidentified aircraft carried out airstrikes that

hit a farm in Derna, killing three women and nine children, and injuring two women, a man and five children.

18. Hospitals and other civilian objects were also attacked. From 1 January to 31 December, UNSMIL/OHCHR documented 16 attacks on medical facilities; they included airstrikes carried out on 4 March on the Ras Lanouf Medical Centre (leading to the death of two male ambulance drivers and of a man accompanying a patient), and the shelling of the Benghazi diabetics clinic in July, and of the Safaa Hospital in Tripoli, in May. In April and June, the Al-Zawiya hospital was closed three times owing to clashes in the vicinity. Other attacks on hospitals were recorded in Obari, Sabha, Sabratha and Sirte. UNSMIL/OHCHR also documented physical assaults by members of armed groups against medical personnel during the performance of their professional duties, including in Tripoli and Benghazi.

19. By late March, the Libyan National Army, following fierce fighting, took full control of the Ganfouda neighbourhood of Benghazi from the Benghazi Revolutionaries Shura Council. Civilians had been besieged for months in a small area of Ganfouda, subjected to airstrikes and a shortage of food, water and medical supplies. On 18 March, Libyan National Army forces opened fire on individuals fleeing Ganfouda, killing at least seven civilians, including two children, and injuring a woman. In March, videos and photographs posted online depicted the Libyan National Army and its allies displaying mutilated bodies of Benghazi Revolutionaries Shura Council fighters. On 20 March, the General Commander of the Libyan National Army reiterated its commitment to adhere to applicable national and international law, and to bring those responsible for violations to justice. As at the end of 2017, no information on the progress of investigations or prosecutions had been shared with UNSMIL/OHCHR.

20. Following the killing of a Libyan National Army pilot captured in Derna on 29 July, the Libyan National Army tightened restrictions on the freedom of movement of civilians and on the entry of fuel and humanitarian assistance to the city.

21. The Tawerghan community, scattered in camps for internally displaced persons and host communities across the country since the armed conflict in 2011, was subjected to attacks by armed groups, including armed incursions into the Tarik al-Matar camp, in July, and the Sidi al-Saeh camp, in October, both resulting in civilian casualties. Throughout 2017, the Sbortowat and Omar Tantoush armed groups intimidated, attacked and deprived displaced Tawerghans, who had been sheltering at the Naval Academy in western Tripoli, of their liberty.

B. Violations of the right to life, including unlawful killings

22. In 2017, UNSMIL/OHCHR received numerous reports alleging that armed groups, including those operating nominally under State institutions, were responsible for summary executions and other unlawful killings of civilians and captured fighters.

23. On 18 May, the Misratan Third Force, backed by the Benghazi Defence Brigade and other allies, attacked the Brak al-Shati airbase, at the time controlled by the Libyan National Army. In the aftermath of the attack, bodies were reportedly brought to a local hospital with bound hands and single gunshot wounds to the head; reportedly, most were wearing military uniforms. At least six civilians were also shot dead at or near the Brak al-Shati base in the same incident. The Presidency Council condemned the attack and opened an investigation; no results had been made public as at the end of 2017.

24. On 26 May, a Tripoli hospital received the bodies of six guards from the Al-Hadba Correction and Rehabilitation Institution; five bore single gunshot wounds to the back of the head. Some hours earlier, an armed group, the Tripoli Revolutionaries Brigade, allied to

the Government, had gained control of the facility, previously headed by Khaled al-Sherif, a former member of the Libyan Islamic Fighting Group.

25. On 26 October, the bodies of 36 men were found in Al-Abyar, some 60 km north-east of Benghazi, an area under the control of the Libyan National Army. Several bore gunshot wounds and signs of torture and had their hands tied. Relatives were reportedly threatened in person by unidentified armed men or via telephone not to hold public burial ceremonies. Armed masked men had reportedly seized several victims from their Benghazi homes days or months before their bodies were recovered. On 28 October, the General Commander of the Libyan National Army ordered the General Military Prosecutor in the east to investigate the incident.

26. Between 7 August and 24 October, at least eight bodies were recovered in al-Zeit street, in the Shibna neighbourhood, Benghazi, bearing gunshot wounds and marks of torture. Armed men had reportedly seized the victims between April and July from Benghazi and Ajdabiya neighbourhoods under the control of the Libyan National Army and its allies. One victim had appeared in a video following his capture "confessing" to carrying out terrorist attacks and confirming his apprehension by the Department of Combating Terrorism, an armed group affiliated to the Libyan National Army.

27. In 2017, at least seven videos emerged on social media depicting Libyan National Army forces carrying out apparent summary executions of suspected Benghazi Revolutionaries Shura Council fighters and other opponents. In at least five videos, a field commander with the Special Forces in Benghazi, Mahmoud Al-Werfalli, was seen to be either directly carrying out the executions or giving orders to that effect. On 18 July, the OHCHR called upon the Libyan National Army to investigate the allegations and to suspend Mahmoud Al-Werfalli from his duties pending the conclusion of investigations.

28. In another case in Benghazi, armed men reportedly aligned with Faraj Qaim, the government-appointed Deputy Minister of the Interior, seized a 21-year-old student on 17 July. Two days later, local police found the student's body dumped on the street.

29. Assassinations were also reported. For instance, on 29 September, four men were shot dead by unknown assailants near Mizdah in the Nafusa mountains. The victims had reportedly been helping to mediate between the Zintan and Mashashia communities in a dispute ongoing since the 2011 armed conflict.

30. UNSMIL/OHCHR received information on kidnappings and killings by armed groups and criminal gangs. On 20 May, a man's body bearing a gunshot wound was brought to a Tripoli hospital. His hands and legs had been bound with metal chains. The man had reportedly been abducted some 40 days earlier by armed men in Wershefana.

Support

31. UNSMIL/OHCHR regularly supported victims and their families, provided advice and advocated for remedies with government officials and armed groups at all levels. UNSMIL issued regular monthly reports on civilian casualties and unlawful killings in Libya. It also supported civil society when working on protection cases, through direct cooperation and capacity-building, and held regular briefings with the international community.

32. UNSMIL/OHCHR regularly received requests for medical care and mental health support for victims of human rights violations and abuses and violations of international humanitarian law, and referred individual cases of concern, where possible, to appropriate organizations. In November, UNSMIL received OHCHR funding for a project managed by Tunisian non-governmental organizations for the provision of mental health support and direct assistance to Libyan survivors of torture and violence. Implementation of the project commenced in late December 2017.

IV. Groups in focus

A. Women

33. Despite the State's obligations to prohibit discrimination on the basis of sex under international law, women and girls continued to suffer from discrimination both in law and in practice. Women continued to be denied the right to pass their nationality on to their spouse or children. Despite efforts by civil society groups and women's rights defenders, the draft constitution adopted by the Constitution Drafting Assembly on 29 July failed to eliminate this discrimination. Armed groups in control of land borders and airports subjected Libyan women to travel restrictions and intimidation, requiring them to travel with a male "guardian". In February, the Chief of Staff of the Libyan National Army issued a decree prohibiting women under the age of 60 from travelling abroad without a male "guardian". Following a public outcry and advocacy by women's rights activists, the decree was withdrawn. In 2017, UNSMIL/OHCHR received reports of intimidation, including social media attacks, against women activists in Libya and others living abroad. The control exercised by armed groups and the general climate of lawlessness disproportionally affected women, restricting their freedom of movement and participation in the public sphere.

34. Some women were arbitrarily detained, often because of family affiliations or for prisoner exchanges, and were held in facilities without female guards, exposed to the risk of sexual abuse. Eight women and five girls taken by the Libyan National Army following their escape from Ganfouda between 18 and 20 March were released in two groups, on 29 March and 20 April 2017, in prisoner exchanges for Libyan National Army fighters taken by the Benghazi Defence Brigades during fighting in the Oil Crescent in March 2017. UNSMIL/OHCHR documented allegations of torture and ill-treatment of women detainees, including beatings, whipping, hair pulling, insults and threats of a sexual nature, at the Mitiga detention facility under the Special Deterrence Force, the Central Security/Abu Salim detention facility and other places of detention nominally under the control of the Ministry of the Interior.

35. Migrant women and girls were raped and otherwise sexually abused during their journeys through Libya, in both official and unofficial migrant detention centres. Survivors described being taken away from cells shared with others by armed men, including guards of the Department for Combating Illegal Migration, and being raped repeatedly by multiple perpetrators. Those who tried to resist were beaten, threatened at gunpoint, and denied food and water.

36. Women and girls accused of engaging in sexual relations outside of marriage, which is criminalized in Libya, were subjected to invasive "virginity tests" by judicial order, regardless of their consent.

B. Children

37. As reported above (see para. 16), 37 children were killed and 39 injured during hostilities apparently as a result of the indiscriminate use of weapons in residential areas by all parties to the conflict, including in crossfire and from explosive remnants of war.

38. UNSMIL/OHCHR also received reports of the unlawful deprivation of liberty of children. For example, on 7 September, six relatives of a former military commander in Ajdabiya, including three boys younger than 3 years of age, were arrested near their apartment by members of the Special Deterrence Force. The children were released after 10

days in detention at the Mitiga detention facility. During their first days in custody, they were denied sufficient food and diapers. Moreover, four children of the Shershari family, who were abducted on 2 December 2015 by unknown assailants in Surman, remained missing.

39. Children were detained together with adults in official prisons and facilities controlled by armed groups. UNSMIL/OHCHR documented cases of children subjected to torture and ill-treatment. For instance, former detainees from the fighting in the Oil Crescent (see para. 34 above) recounted to UNSMIL/OHCHR how in March 2017 armed men affiliated to the Libyan National Army had beaten a 17-year-old detainee until he lost consciousness.

40. As at the end of 2017, 24 unaccompanied children from Tunisia, Egypt and other African countries remained at the Libyan Red Crescent shelter in Misrata following their transfer from Sirte in late 2016, in the context of military operations against ISIL They had insufficient access to humanitarian assistance, education and psychological support.

C. Migrants

41. While Libya is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, its legislation and practice contravene international and regional law and standards applicable to migrants,[3] including refugees and asylum seekers. Libya criminalizes irregular migration and has no asylum determination system.

42. UNSMIL/OHCHR found that migrants in Libya face gross human rights violations and abuses, both in and outside detention.[4] Perpetrators include State officials, armed groups, smugglers, traffickers and other criminal gangs. State institutions remain weak and, in some instances, the authorities were unable or unwilling to ensure effective protection for migrants.

43. Migrants faced arbitrary detention in inhuman conditions and continued to be subjected to torture, including rape and other forms of sexual violence, abduction for ransom, extortion, forced labour, forced prostitution, and unlawful killings. Those held in official detention centres run by the Department for Combating Illegal Migration under the Ministry of the Interior were held indefinitely, with no judicial process. UNSMIL/OHCHR gathered information on unlawful killings, rape, torture and other extreme violence in unofficial detention places run by armed groups, smugglers and traffickers in Beni Walid, Sabratha and Sabha. Sub-Saharan Africans were especially vulnerable to abuse as a result of racial discrimination. Rape and other forms of sexual violence against women and girls were widespread.

44. In 2017, UNSMIL/OHCHR visited nine detention centres managed by the Department for Combating Illegal Migration, in Tripoli, Gharyan, Misrata and Surman, and observed inhuman conditions. Detainees were often crammed into hangars with appalling sanitary conditions, little space to lie down, and no or extremely limited access to light,

[3] OHCHR defines an international migrant as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence". See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2014, p. 4.

[4] See UNSMIL/OHCHR, "Detained and dehumanised", report on human rights abuses against migrants in Libya, 13 December 2016.

ventilation or appropriate hygiene facilities. Most were denied outdoor time and were not provided with any means to communicate with their families. UNSMIL/OHCHR also received numerous and consistent reports of torture, including beatings, electric shocks and sexual violence, and of forced labour of detainees. At 31 October, nearly 20,000 migrants were detained in facilities run by the Department for Combating Illegal Migration in western Libya. The number of detainees spiked after the authorities arrested thousands of migrants following armed clashes in the city of Sabratha, a smuggling and trafficking hub, in October. By the end of the year, following the repatriation of thousands of migrants to their home countries, an estimated 5,200 migrants were still being held in centres run by the Department of Combating Illegal Migration.

45. UNSMIL/OHCHR received reports of the bodies of hundreds of migrants being washed up on Libyan shores, found in remote areas (such as forests or deserts) or brought to morgues. Some appeared to have died from drowning or thirst; others bore gunshot wounds. On 7 March, the bodies of at least 13 sub-Saharan Africans were uncovered in the Telil forest, near Sabratha, some bearing gunshot wounds. On 4 June, seven sub-Saharan African migrants suffocated inside a truck after they had been locked in and abandoned by smugglers in the area of Garabulli. Officials from the Ministry of the Interior uncovered the truck with deflated tyres, but apparently did not open the doors until hours later, after it had been towed to Tripoli.

46. UNSMIL/OHCHR documented the use of firearms, physical violence and threatening language by coastguard officials during search-and-rescue operations in Libyan and international waters. For instance, on 10 May, a Libyan Coast Guard patrol boat intervened in an ongoing rescue operation of some 500 people in a wooden vessel run by the German non-governmental organization Sea-Watch, some 20 nautical miles from Libyan shores. According to testimonies by the rescue crew and survivors, members of the Coast Guard pointed their firearms at the migrants, threatened them, and rammed into their wooden boat twice. Survivors were taken to centres run by the Department for Combating Illegal Migration, where some were subjected to torture or ill-treatment. In a similar incident, on 6 November, some 28 nautical miles from Libyan shores, members of the Libyan Coast Guard reportedly beat migrants with a rope as they boarded, threatened Sea-Watch rescuers and instructed them to leave the location. The Coast Guard reportedly engaged in reckless behaviour during search-and-rescue operations and did not provide life jackets, further endangering the lives of people in distress at sea.

D. Media professionals, activists and human rights defenders

47. Media professionals, activists and human rights defenders had their rights to freedom of expression and association restricted and were subjected to abductions, arbitrary detention, intimidation and threats. Armed groups, including those nominally affiliated to State institutions, were the main perpetrators of such acts, with weak State institutions unable or, at times, unwilling to provide effective protection.

48. Activists and journalists who criticized armed groups, or who reported on human rights issues, were threatened and attacked. In July, a journalist fled Al-Zawiya following death threats by members of local armed groups, reportedly because of his coverage of political and humanitarian developments in the city. In August, armed men apprehended a human rights defender in Tripoli after they discovered his field of work; he was forced to unlock his computer and was questioned on his activities before being released hours later. On 8 October, an armed group affiliated to the Libyan National Army arrested four journalists, their driver and another woman in Hun, some 640 km south-east of Tripoli; they were questioned about their work and political affiliation, and were released two days later.

On 9 October, armed men beat a woman journalist and broke her camera and other equipment during her coverage of a protest in Tobruk.

49. On 28 August, in Tripoli, an event marking the launch of a collection of short stories and poems by Libyan authors was suspended following warnings that members of the Special Deterrence Force were moving in armoured vehicles towards the venue. On 30 August, the General Committee of Culture of the Government criticized the publication's alleged "pornographic" and "immoral" content, and called for legal action against those involved. The writers, organizers and publishers faced threats and intimidation on their social media pages. Several consequently went into hiding, while others fled the country. The Faqih centre, the venue that hosted the event, was shut down.

50. On 3 November, in another attack on public events in Tripoli, the Special Deterrence Force raided the Comic-Con exhibition and arrested dozens of participants and organizers. Most participants were released within 24 hours after their parents or guardians were summoned by the Special Deterrence Force for lecturing on the "immoral character" of the event. By 20 December, all organizers had been released. Some were reportedly tortured or otherwise ill-treated in custody.

51. UNSMIL/OHCHR also documented attacks on media outlets. In March, armed men from the Ras Hassan neighbourhood of Tripoli raided the offices of the Al-Nabaa television station, and vandalized the premises before setting them on fire. In April, unidentified assailants looted and set fire to the Awal radio station in Surman.

52. While article 26 (6) of the Libyan Political Agreement commits parties to support the functioning of the National Council for Civil Liberties and Human Rights, the country's national human rights institution has remained non-operational since armed conflict broke out in mid-2014. The term of the Council elapsed in late 2014 and had not been renewed by the House of Representatives, as required by the law establishing the Council.

Support

53. UNSMIL/OHCHR worked to directly support victims and their relatives by intervening with the Government and other counterparts on individual cases and issues of concern by briefing regularly the international community and engaging with United Nations human rights mechanisms.

54. In 2017, UNSMIL organized or supported at least three workshops for civil society and media workers on the documentation of human rights violations, including conflict-related sexual violence, and the use of international human rights mechanisms. The workshops were run jointly with the Cairo Institute for Human Rights Studies, Tunisian and Libyan organizations and United Nations partners.

55. While providing support, it was clear that media professionals, activists and human rights defenders at risk in Libya lacked financial and other essential support for protection. Further ongoing capacity-building for human rights defenders, particularly for women defenders, was also needed.

V. Administration of justice

A. Overview

56. In Libya, the criminal justice legal framework fails to comply with international human rights standards.[5] Efforts at law reform were hampered by the unstable environment, the dysfunction of legislative institutions, and political fragmentation. Members of the judiciary faced attacks and threats that severely limited their functioning; for instance, on 18 September 2017, an armed group physically assaulted a prosecutor at the Gharyan court complex, leaving the premises with defendants and court documents. While a number of courts, particularly in eastern Libya, reopened in 2017, the ability of the judiciary to process conflict-related and other politically sensitive cases remained limited. The Judicial Police - under the authority of the Ministry of Justice, with responsibility for, inter alia, managing prisons, enforcing court decisions, maintaining the security of courts and apprehending fugitives – also frequently cited security concerns as the reason for their failure to bring detainees to court.

57. The inability of the justice system to function effectively has led to widespread impunity, particularly for violations and abuses perpetrated by armed groups. UNSMIL/OHCHR is unaware of any prosecution of armed group members, including those affiliated to the State, for crimes related to abuses committed since 2011, including in cases where the State exercised effective control, and announced investigations, vowing to bring those responsible to justice (see paras. 22-30 above).

B. Libyan Political Agreement

58. Little progress was made in implementing the administration of justice and rule of law provisions of the Libyan Political Agreement, which requires that armed groups release or hand over to the judicial authorities persons held in custody without a legal basis; that judicial authorities bring those persons before the judiciary or release them; and that the competent judicial authorities provide effective protection. Implementation of the Agreement would help to address many concerns regarding impunity and abuses committed by armed groups.

59. The Government of National Accord exclusively grants the authority to arrest and detain to law enforcement bodies established by law.[6] In a positive development, the Government appointed a Minister of Justice, who assumed his functions in late March. In meetings held in June with UNSMIL, the Minister acknowledged the importance of tackling the issue of unlawful detention, and confirmed his commitment to address human rights concerns in the context of detention in compliance with international law. The Ministry's priorities for 2017 included transferring all facilities under the effective oversight of the Judicial Police and the judiciary, ending torture and other custodial abuses, and holding perpetrators accountable. The implementation of these objectives has been severely stalled to date.

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[5] UNSMIL/OHCHR, Report on the trial of 37 former members of the Qhadafi regime (Case 630/2012), 21 February 2017, available from www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime_EN.pdf

[6] See articles 26 (2), (3) and (4) and 44.

C. Arbitrary detention, deprivation of liberty, torture and ill-treatment

60. Instances of arbitrary detention, unlawful deprivation of liberty, and torture and ill-treatment, in violation of applicable international human rights law, continued to be reported to UNSMIL/OHCHR. In April 2017, the Working Group on Arbitrary Detention found that the detention of seven men in eastern Libya for nearly three years was arbitrary, given the lack of any legal basis for their detention and the breaches of their right to a fair trial (see A/HRC/WGAD/2017/6).

61. UNSMIL/OHCHR found evidence that arbitrary detention,[7] unlawful deprivation of liberty, enforced disappearances, torture and ill-treatment were widespread. Victims included individuals targeted for their tribal or family identity or opinion, as well as migrants. Perpetrators were primarily armed groups, including those acting on behalf of the State.

62. In October, the Judicial Police estimated that some 6,400 men, women and children were currently being held in 26 official prisons.[8] Some 75 per cent were in pretrial detention, including thousands detained since the 2011 armed conflict, with no prospect of trial. While no official statistics were available, an additional 2,600 people were estimated to be held at the Mitiga detention facility run by the Special Deterrence Force, most without having appeared before judicial authorities. The number of detainees held in facilities run by the Ministry of Defence, the Ministry of the Interior or directly by armed groups remained unknown.

63. Armed groups detained individuals, often on the basis of their affiliations or simply to exchange them for other detainees. Most were held with no judicial process, and sometimes in contravention of release orders issued by judicial bodies. Detainees were often held incommunicado for prolonged periods of time, subjected to torture or ill-treatment, and coerced into giving confessions. At times, confessions were broadcast on television and used in criminal proceedings.

64. In 2017, UNSMIL/OHCHR documented patterns of torture, ill-treatment and inhuman prison conditions in a number of detention facilities, including the Gernada prison in Al-Baida, Al-Kuweifiya prison in Benghazi, Al-Jawiya and Tomina prisons in Misrata and the Mitiga and Abu Salim detention facilities in Tripoli. Patterns of torture included beatings, cigarette burns, electrocution, death threats, suspension in stress positions and confinement in small, suffocating spaces. UNSMIL/OHCHR continued to receive reports of deaths in custody. From January to October 2017, at least 35 bodies bearing signs of torture were brought to Tripoli hospitals. They included the body of a man in his fifties. In June, the man had been summoned for questioning by an armed group nominally under the oversight of the Ministry of the Interior. Four days later, he was found dead. According to the forensics report, examined by UNSMIL/OHCHR, the victim had been "subjected to beatings and torture before his death".

65. During 2017, UNSMIL/OHCHR visited the Ain Zara (A and B), Al-Jdeida and Al-Jawiya prisons under the Ministry of Justice, and the Central Security/Abu Salim detention facility, under the Ministry of the Interior. While conditions had improved in the Al-Jdeida and Ain Zara (B) prisons when compared with previous years, UNSMIL/OHCHR observed severe overcrowding and lack of access to basic necessities in Al-Jawiya, where women

[7] In the present report, the term "detention" is intended to reflect deprivation of liberty by either State officials or armed groups, given that armed groups remain in control of many facilities and that many armed groups were nominally brought under the purview of government ministries after 2011.

[8] Information provided to UNSMIL at a meeting with officials from the Ministry of Justice, on 16 November 2016.

were guarded by male prison guards. Despite repeated requests, UNSMIL was denied access to the Mitiga detention facility controlled by the Special Deterrence Force; it was able, however, to document human rights violations committed at the facility through interviews with relatives of inmates, witnesses, medical professionals and released persons, as well as forensics reports. Violations included prolonged arbitrary and incommunicado detention, torture, deaths in custody and summary executions. UNSMIL repeatedly raised concerns about these violations in official communications and meetings with Special Deterrence Force officials, the Office of the Prosecutor General, the Prime Minister, and the Minister of Justice and the Minister of the Interior. Little progress was made on implementing an agreement dating back to 2016 to allow the Office of the Prosecutor General access to detainees in Mitiga to process their cases in accordance with the law.

66. The numbers of individuals held for migration-related offences in centres run by the Department for Combating Illegal Migration generally fluctuated between 4,000 and 7,000, and rising to nearly 20,000 in late October following the transfer of thousands of migrants held by smugglers and traffickers in Sabratha into the custody of the Department. No registration system to record the movement of migrants in and out of detention existed. Armed groups, individuals, security forces and the Libyan Coast Guard brought migrants to detention centres with no legal process, judicial review or other oversight mechanism.

Support

67. UNSMIL/OHCHR organized four workshops and seminars in Libya and Tunisia on the judiciary, prison management and international human rights mechanisms for judicial police officers, members of the judiciary and other counterparts. On 13 and 14 September, UNSMIL, in coordination with the United Nations Development Programme (UNDP), facilitated a workshop on addressing arbitrary and prolonged detention in Libya within a national reconciliation framework. The workshop was attended by 40 representatives of municipalities, civil society, including academics and legal experts, and concluded with the adoption of a set of recommendations addressed to the legislative authority, the Government and municipalities, as well as judicial authorities and detention facilities.

68. UNSMIL also conducted 15 visits to judicial police prisons in Misrata, Tobruk and Tripoli, and two visits to detention facilities under the Ministry of the Interior in Tripoli. It provided advice and advocated with the Judicial Police and armed groups in Tripoli on the process of moving detainees from unofficial places of detention to official prisons. It carried out prison situation assessments and capacity-building activities with prison directors. It worked on the implementation of the human rights due diligence policy on United Nations support to non-United Nations security forces. In September, the United Nations human rights due diligence policy task force in Libya adopted a risk assessment committing United Nations agencies involved in supporting the Coast Guard to extensive monitoring and advocacy measures to mitigate the risks of human rights violations.

69. UNSMIL/OHCHR advocated for the Presidency Council and the Ministry of Justice to implement the justice and rule of law provisions of the Libyan Political Agreement. It also advocated for the international community to screen recipients of technical assistance and capacity-building programmes.

VI. Transitional justice

70. Little progress was made in the implementation of provisions of the Libyan Political Agreement that committed parties to applying law No. 29 of 2013 on transitional justice. In 2017, the Presidency Council issued two decrees, establishing a preparatory committee tasked with organizing a dialogue process to develop a mandate for a future national

reconciliation commission, and a reparations fund for harm suffered during the 2011 and 2014 armed conflicts.

71. On 21 February, UNSMIL and OHCHR jointly issued a report on the trial of 37 former members of the Qadhafi regime (Case 630/2012),[8] in which they found numerous breaches of fair trial standards in the conduct of the proceedings, including to the rights to a public trial, to adequate time and facilities to prepare and present a defence. The verdict issued on 28 July 2015, sentencing 32 defendants to death or to prison terms, was still under review by the cassation chamber of the Supreme Court at the end of 2017. In May, several defendants in the case were transferred from Al-Hadba prison to an unknown location. Their exact whereabouts and legal status remained unclear, despite UNSMIL/OHCHR requests for clarification and access to prisoners addressed to the Minister of Justice and the Office of the Prosecutor General.

72. In its resolution 1970 (2011), the Security Council referred the situation of Libya to the Prosecutor of the International Criminal Court, giving the Court jurisdiction over crimes committed in Libya since 2011. On 24 April, the Court unsealed an arrest warrant for Khaled Al-Tohamy for crimes against humanity and war crimes, including murder and persecution committed during the 2011 armed conflict.[9] Media reported the release from detention in Zintan, on 16 June, of Saif al-Islam Qadhafi, who was subject to an arrest warrant issued by the Court in 2011. On 15 August, the Pre-Trial Chamber I of the Court issued a warrant for the arrest of Mahmoud Al-Werfalli for the war crime of murder (see para. 27 above).[10] The three men remained at large, amid reports that Al-Werfalli was involved in additional crimes under international law following the issuance of a warrant for his arrest, despite the announcement by the Libyan National Army that he was in custody and under investigation. UNSMIL/OHCHR called upon all parties to cooperate with the Court and to surrender the suspects to it.

73. On 20 June, the Presidency Council ratified an agreement reached by the Misrata/Tawargha dialogue committee in August 2016 and amended in March 2017. The agreement outlined a programme of compensation for victims of the 2011 conflict and the return of some 40,000 displaced Tawerghans. On 26 December, the Presidency Council announced that Tawerghans could begin to return home as of 1 February 2018, and instructed relevant national security and service institutions to make due preparations. UNSMIL urged the Presidency Council and other stakeholders to implement the agreement in full compliance with international standards, including to remove any conditionality on the return of internally displaced persons, to ensure full transparency and oversight for reparations and other payments, and to address truth and justice issues through a national programme. On 18 May, an agreement was reached between the Mashashiya and Zintan communities on the return of persons displaced since the 2011 armed conflict to their homes, and on the establishment of mechanisms to address the issues of reparation and missing persons.

Support

74. UNSMIL/OHCHR continued to engage with the Office of the Prosecutor General and other officials on issues relating to fair trial standards, criminal law reform and accountability, and raised a number of individual cases of concern and patterns of abuse.

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[9] International Criminal Court, "Situation in Libya: ICC Pre-Trial Chamber I unseals a warrant of arrest for Al-Tuhamy Mohamed Khaled charged with war crimes and crimes against humanity", press release, 24 April 2017.

[10] International Criminal Court, *The Prosecutor v. Mahmoud Moustafa Busayf Al-Werfalli*, 15 August 2017.

75. UNSMIL/OHCHR continued to support the Misrata/Tawergha dialogue committee in the implementation of its agreement on compensation and returns, in accordance with international standards. On 19 September, UNSMIL and UNDP organized a meeting in Tripoli with members of the dialogue committee and government officials, including the Deputy Prime Minister and the Minister for Internally Displaced Persons, to discuss implementation mechanisms. On 25 and 26 October, UNSMIL and UNDP also organized a consultation workshop for civil society representatives on the implementation of the agreement in accordance with international standards.

76. In response to requests by members of the Zintan and Mashashiya communities for support in their reconciliation process, UNSMIL and UNDP organized meetings with representatives of both communities, addressing issues of safe and dignified return for those displaced, truth-seeking and justice, security and the resolution of historical disputes, including those linked to land ownership.

VII. Conclusions and recommendations

77. Armed groups, including those acting on behalf of the State, continued to be primarily responsible for grave human rights violations and abuses in Libya. State institutions remained weak and often were unable or, in some cases, unwilling to ensure accountability for human rights violations or abuses or to end impunity.

78. Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, the High Commissioner appeals to all parties to the conflict to cease all hostilities and to engage in a meaningful, inclusive political dialogue built on ensuring the respect for human rights and the rule of law.

79. The High Commissioner recommends that all parties to the conflict, including those with de facto control of territory in Libya:

(a) Desist immediately from all acts constituting violations of international humanitarian law and violations or abuses of international human rights law, including those constituting crimes under international law; in particular, they should cease immediately all attacks on civilians and comply fully with all applicable principles of international humanitarian law, notably the principles of distinction, proportionality and precaution, and take the steps necessary to end summary executions and other unlawful killings and to hold accountable those responsible;

(b) Declare that such acts will not be tolerated, and remove those suspected of such acts from active duty, pending investigation and prosecution by responsible State authorities in accordance with the law;

(c) Release immediately and unconditionally all those detained arbitrarily and unlawfully, and transfer all other persons deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice;

(d) Facilitate the unfettered and unhindered access to detainees and places of detention by United Nations entities and other organizations concerned with humanitarian assistance and protection;

(e) Take concrete steps to eliminate torture and ill-treatment, including rape and all forms of sexual violence, notably those acts committed by individuals operating in support of the State or as its agents.

80. The High Commissioner recommends that the Government of Libya:

(a) Address the situation of detainees and all those deprived of liberty by ensuring that the State has exclusive control of all detention facilities, and that all cases are processed promptly and in accordance with the law, by independent judicial bodies, and by ensuring the full respect for due process and fair trial standards, in accordance with Libyan law and international human rights law;

(b) Begin a process of disarmament, demobilization and reintegration of members of armed groups, and institute a vetting programme, compliant with due process standards, to remove or to prevent the recruitment into the State security forces of individuals concerning whom there are reasonable grounds to believe that they have been involved in violations of international humanitarian law, or violations or abuses of international human rights law;

(c) Conduct prompt, independent, impartial, full and transparent investigations into serious violations of international humanitarian law, and violations or abuses of international human rights law, ensuring the appropriate care and protection of victims, as well as accountability for those responsible, in accordance with the law and in full compliance with due process and fair trial standards;

(d) Ensure the right to due process of detainees is fully respected and protected, including the right to access legal counsel and to receive visits by family members;

(e) Transfer women detainees to facilities with sufficient female guards and other trained personnel, and establish gender-appropriate health care and other services for women and accompanying children;

(f) Extend full cooperation to the International Criminal Court by facilitating unhindered access to relevant locations in Libya, witnesses and information in carrying out its investigations and ensuring full compliance with its rulings;

(g) Address urgently the situation of migrants to ensure that the rights of all individuals, regardless of their status, are protected and respected, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure, and immediately implementing alternatives to detention;

(h) Facilitate the voluntary, safe and dignified return of persons who are currently internally displaced, including the Tawergha community.

81. The High Commissioner recommends that the international community:

(a) Provide the International Criminal Court with the resources necessary to investigate, prosecute and try the alleged crimes under its jurisdiction that may have been perpetrated in Libya since 2011;

(b) Assist the Government of Libya to release all those detained arbitrarily and others unlawfully deprived of their liberty, and to transfer all those lawfully deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice;

(c) Provide the Government with technical assistance and other support to reform the State's criminal justice system, including the penitentiary system, in accordance with international norms and standards;

(d) Consider supporting programmes of legal aid for those detained and at particular risk of grave human rights violations;

(e) Apply a due diligence framework to programmes that support the security forces, and stringent screening procedures to recipients of technical and other

assistance to ensure that they are not responsible for violations of international humanitarian law or violations or abuses of international human rights law or international crimes;

(f) Offer effective protection and assistance to victims of human rights violations, including torture, by ensuring adequate financial and other support to organizations working on psychological and physical rehabilitation and counselling;

(g) Assist the Government of Libya in ensuring the rights of migrants are fully respected and protected, including by providing technical assistance and capacity-building to government institutions on legislative and regulatory reforms, in compliance with the United Nations human rights due diligence policy;

(h) Ensure that any cooperation with the Government of Libya in relation to migration is conditional on the Government taking concrete steps to address human right violations and abuses committed against migrants;

(i) Ensure respect for the principle of non refoulement, in accordance with international law.

82. The High Commissioner recommends that the Human Rights Council remain seized of the progress made towards accountability and the situation of human rights in Libya.